

State of Arizona  
Senate  
Forty-seventh Legislature  
First Regular Session  
2005

CHAPTER 206

## **SENATE BILL 1353**

AN ACT

AMENDING SECTIONS 12-2292, 12-2293, 12-2294, 12-2294.01, 12-2295, 12-2296, 12-2802, 36-507, 36-509, 36-517.01, 36-664 AND 36-3602, ARIZONA REVISED STATUTES; RELATING TO MEDICAL AND PAYMENT RECORDS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-2292, Arizona Revised Statutes, is amended to  
3 read:

4 12-2292. Confidentiality of medical records and payment records

5 A. Unless otherwise provided by law, all medical records and payment  
6 records, and the information contained in medical records and payment  
7 records, are privileged and confidential. A health care provider may only  
8 disclose that part or all of a patient's medical records and payment records  
9 as authorized by state or federal law or written authorization signed by the  
10 patient or the patient's health care decision maker.

11 B. This article does not limit the effect of any other federal or  
12 state law governing the confidentiality of medical records AND PAYMENT  
13 RECORDS.

14 Sec. 2. Section 12-2293, Arizona Revised Statutes, is amended to read:

15 12-2293. Release of medical records and payment records to  
16 patients and health care decision makers; definition

17 A. Except as provided in subsection SUBSECTIONS B AND C of this  
18 section, on the written request of a patient or the patient's health care  
19 decision maker for access to or copies of the patient's medical records AND  
20 PAYMENT RECORDS, the health care provider in possession of the record shall  
21 provide access to or copies of the medical records to the patient or the  
22 patient's health care decision maker.

23 B. A health care provider may deny a request for access to or copies  
24 of medical records OR PAYMENT RECORDS if ~~the patient receives treatment for a~~  
25 ~~mental disorder as defined in section 36-501 and the attending physician or~~  
26 ~~psychologist~~ A HEALTH PROFESSIONAL determines and notifies the health care  
27 provider in possession of the medical record that either:

28 1. ~~Access to the medical record is contraindicated and~~ BY THE PATIENT  
29 OR THE PATIENT'S HEALTH CARE DECISION MAKER is reasonably likely to endanger  
30 the life or physical safety of the patient or another person.

31 2. ~~The information is raw test data and psychometric testing materials~~  
32 ~~and access is reasonably likely to endanger the life or physical safety of~~  
33 ~~the patient or another person.~~

34 2. THE RECORDS MAKE REFERENCE TO A PERSON OTHER THAN A HEALTH  
35 PROFESSIONAL AND ACCESS BY THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION  
36 MAKER IS REASONABLY LIKELY TO CAUSE SUBSTANTIAL HARM TO THAT OTHER PERSON.

37 3. ACCESS BY THE PATIENT'S HEALTH CARE DECISION MAKER IS REASONABLY  
38 LIKELY TO CAUSE SUBSTANTIAL HARM TO THE PATIENT OR ANOTHER PERSON.

39 ~~3.~~ 4. Access by the PATIENT OR THE patient's health care decision  
40 maker would reveal information obtained under a promise of confidentiality  
41 ~~between the patient and the health care professional~~ WITH SOMEONE OTHER THAN  
42 A HEALTH PROFESSIONAL AND ACCESS WOULD BE REASONABLY LIKELY TO REVEAL THE  
43 SOURCE OF THE INFORMATION.

1 C. A HEALTH CARE PROVIDER MAY DENY A REQUEST FOR ACCESS TO OR COPIES  
2 OF MEDICAL RECORDS OR PAYMENT RECORDS IF THE HEALTH CARE PROVIDER DETERMINES  
3 THAT EITHER:

4 1. THE INFORMATION WAS CREATED OR OBTAINED IN THE COURSE OF CLINICAL  
5 RESEARCH AND THE PATIENT OR THE PATIENT'S HEALTH CARE DECISION MAKER AGREED  
6 TO THE DENIAL OF ACCESS WHEN CONSENTING TO PARTICIPATE IN THE RESEARCH AND  
7 WAS INFORMED THAT THE RIGHT OF ACCESS WILL BE REINSTATED ON COMPLETION OF THE  
8 RESEARCH.

9 2. A HEALTH CARE PROVIDER IS A CORRECTIONAL INSTITUTION OR IS ACTING  
10 UNDER THE DIRECTION OF A CORRECTIONAL INSTITUTION AND ACCESS BY A PATIENT WHO  
11 IS AN INMATE IN THE CORRECTIONAL INSTITUTION WOULD JEOPARDIZE THE HEALTH,  
12 SAFETY, SECURITY, CUSTODY OR REHABILITATION OF THE PATIENT OR OTHER INMATES  
13 OR THE SAFETY OF ANY OFFICER, EMPLOYEE OR OTHER PERSON AT THE CORRECTIONAL  
14 INSTITUTION OR OF A PERSON WHO IS RESPONSIBLE FOR TRANSPORTING THE INMATE.

15 ~~C.~~ D. If the health care provider denies a request for access to or  
16 copies of the medical records OR PAYMENT RECORDS, the health care provider  
17 must note this determination in the patient's ~~medical record~~ RECORDS and  
18 provide to the patient or the patient's health care decision maker a written  
19 explanation of the reason for the denial of access. The health care provider  
20 must release the medical ~~record~~ RECORDS OR PAYMENT RECORDS information for  
21 which there is not a basis to deny access under subsection B of this section.

22 E. FOR THE PURPOSES OF THIS SECTION, "HEALTH PROFESSIONAL" HAS THE  
23 SAME MEANING PRESCRIBED IN SECTION 32-3201.

24 Sec. 3. Section 12-2294, Arizona Revised Statutes, is amended to read:  
25 12-2294. Release of medical records and payment records to

26 third parties

27 A. A health care provider shall disclose medical records or payment  
28 records, or the information contained in medical records or payment records,  
29 without the patient's written authorization as otherwise required by law or  
30 when ordered by a court or tribunal of competent jurisdiction.

31 B. A health care provider may disclose medical records or payment  
32 records, or the information contained in medical records or payment records,  
33 pursuant to written authorization signed by the patient or the patient's  
34 health care decision maker.

35 C. A health care provider may disclose medical records OR PAYMENT  
36 RECORDS or the information contained in medical records OR PAYMENT RECORDS  
37 without the written authorization of the patient or the patient's health care  
38 decision maker as otherwise authorized by state or federal law, including the  
39 health insurance portability and accountability act privacy standards  
40 (45 Code of Federal Regulations part 160 and part 164, subpart E), or as  
41 follows:

42 1. ~~To attending and consulting~~ health care providers who are currently  
43 providing health care to the patient for the purpose of diagnosis or  
44 treatment of the patient.

1           2. To health care providers who have previously provided treatment to  
2 the patient, to the extent that the records pertain to the provided  
3 treatment.

4           3. To ambulance attendants as defined in section 36-2201 for the  
5 purpose of providing care to or transferring the patient whose records are  
6 requested.

7           4. To a private agency that accredits health care providers and with  
8 whom the health care provider has an agreement requiring the agency to  
9 protect the confidentiality of patient information.

10          5. To a health profession regulatory board as defined in section  
11 32-3201.

12          6. To health care providers for the purpose of conducting utilization  
13 review, peer review and quality assurance pursuant to section 36-441, 36-445,  
14 36-2402 or 36-2917.

15          7. To a person or entity that provides billing, claims management,  
16 medical data processing, utilization review or other administrative services  
17 to the patient's health care providers AND WITH WHOM THE HEALTH CARE PROVIDER  
18 HAS AN AGREEMENT REQUIRING THE PERSON OR ENTITY TO PROTECT THE  
19 CONFIDENTIALITY OF PATIENT INFORMATION.

20          8. To the legal representative of a health care provider in possession  
21 of the medical record RECORDS OR PAYMENT RECORDS for the purpose of securing  
22 legal advice.

23          9. To the patient's third party payor or the payor's contractor.

24          10. To the industrial commission of Arizona or parties to an industrial  
25 commission claim pursuant to ~~the provisions of~~ title 23, chapter 6.

26          D. A health care provider may disclose a deceased patient's medical  
27 records OR PAYMENT RECORDS or the information contained in medical records OR  
28 PAYMENT RECORDS to the patient's health care decision maker at the time of  
29 the patient's death. A health care provider also may disclose a deceased  
30 patient's medical records OR PAYMENT RECORDS or the information contained in  
31 medical records OR PAYMENT RECORDS to the personal representative or  
32 administrator of the estate of a deceased patient, or if a personal  
33 representative or administrator has not been appointed, to the following  
34 persons in the following order of priority, unless the deceased patient  
35 during the deceased patient's lifetime or a person in a higher order of  
36 priority has notified the health care provider in writing that the deceased  
37 patient opposed the release of the medical records OR PAYMENT RECORDS:

38           1. The deceased patient's spouse, unless the patient and the patient's  
39 spouse were legally separated at the time of the patient's death.

40           2. The acting trustee of a trust created by the deceased patient  
41 either alone or with the deceased patient's spouse if the trust was a  
42 revocable inter vivos trust during the deceased patient's lifetime and the  
43 deceased patient was a beneficiary of the trust during the deceased patient's  
44 lifetime.

45           3. An adult child of the deceased patient.

1 4. A parent of the deceased patient.

2 5. An adult brother or sister of the deceased patient.

3 6. A guardian or conservator of the deceased patient at the time of  
4 the patient's death.

5 E. A person who receives medical records OR PAYMENT RECORDS pursuant  
6 to this section shall not disclose those records without the written  
7 authorization of the patient or the patient's health care decision maker,  
8 unless otherwise authorized by law.

9 F. If a health care provider releases a patient's medical record  
10 RECORDS OR PAYMENT RECORDS to a contractor for the purpose of duplicating or  
11 disclosing the record RECORDS on behalf of the health care provider, the  
12 contractor shall not disclose any part or all of a patient's medical record  
13 RECORDS OR PAYMENT RECORDS in its custody except as provided in this article.  
14 After duplicating or disclosing a patient's medical record RECORDS OR PAYMENT  
15 RECORDS on behalf of a health care provider, a contractor must return the  
16 record RECORDS to the health care provider who released the medical record  
17 RECORDS OR PAYMENT RECORDS to the contractor.

18 Sec. 4. Section 12-2294.01, Arizona Revised Statutes, is amended to  
19 read:

20 12-2294.01. Release of medical records or payment records to  
21 third parties pursuant to subpoena

22 A. A subpoena seeking medical records OR PAYMENT RECORDS shall be  
23 served on the health care provider and any party to the proceedings at least  
24 ten days before the production date on the subpoena.

25 B. ~~A health care provider shall release the medical records to the~~  
26 ~~party seeking the medical records if the subpoena meets THAT SEEKS MEDICAL~~  
27 RECORDS OR PAYMENTS RECORDS MUST MEET one of the following requirements:

28 1. The subpoena is accompanied by a written authorization signed by  
29 the patient or the patient's health care decision maker.

30 2. The subpoena is accompanied by a court or tribunal order requiring  
31 THAT REQUIRES the release of the medical records to the party seeking the  
32 medical records OR THAT MEETS THE REQUIREMENTS FOR A QUALIFIED PROTECTIVE  
33 ORDER UNDER THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT PRIVACY  
34 STANDARDS (42 CODE OF FEDERAL REGULATIONS SECTION 164.512(e)).

35 3. The subpoena is a grand jury subpoena issued in a criminal  
36 investigation.

37 4. The subpoena is issued by a health profession regulatory board as  
38 defined in section 32-3201.

39 5. The health care provider is required by another law to release the  
40 medical records to the party seeking the medical records.

41 C. IF A SUBPOENA DOES NOT MEET ONE OF THE REQUIREMENTS OF SUBSECTION B  
42 OF THIS SECTION, A HEALTH CARE PROVIDER SHALL NOT PRODUCE THE MEDICAL RECORDS  
43 OR PAYMENT RECORDS TO THE PARTY SEEKING THE RECORDS, BUT MAY EITHER FILE THE  
44 RECORDS UNDER SEAL PURSUANT TO SUBSECTION D OF THIS SECTION, OBJECT TO

1 PRODUCTION UNDER SUBSECTION E OF THIS SECTION OR FILE A MOTION TO QUASH OR  
2 MODIFY THE SUBPOENA UNDER RULE 45 OF THE ARIZONA RULES OF CIVIL PROCEDURE.

3 ~~E. D. IT IS SUFFICIENT COMPLIANCE WITH A SUBPOENA ISSUED IN A COURT~~  
4 ~~OR TRIBUNAL PROCEEDING if the subpoena does not meet any of the requirements~~  
5 ~~of subsection B, a health care provider shall not produce the records~~  
6 ~~pursuant to the subpoena, but may choose to deliver~~ DELIVERS the MEDICAL  
7 records OR PAYMENT RECORDS under seal as follows:

8 1. The health care provider may deliver by certified mail or in person  
9 a copy of all the ~~medical~~ records described in the subpoena by the production  
10 date to the clerk of the court or tribunal or if there is no clerk then to  
11 the court or tribunal, together with the affidavit described in paragraph 4  
12 of this subsection.

13 2. The health care provider shall separately enclose and seal a copy  
14 of the records in an inner envelope or wrapper, with the title and number of  
15 the action, name of the health care provider and date of the subpoena clearly  
16 inscribed on the copy of the records. The health care provider shall enclose  
17 the sealed envelope or wrapper in an outer envelope or wrapper that is sealed  
18 and directed to the clerk of the court or tribunal or if there is no clerk  
19 then to the court or tribunal.

20 3. The copy of the ~~medical~~ records shall remain sealed and shall be  
21 opened only on order of the court or tribunal conducting the proceeding.

22 4. The ~~medical~~ records shall be accompanied by the affidavit of the  
23 custodian or other qualified witness, stating in substance each of the  
24 following:

25 (a) That the affiant is the duly authorized custodian of the records  
26 and has authority to certify the ~~medical~~ records.

27 (b) That the copy is a true complete copy of the ~~medical~~ records  
28 described in the subpoena.

29 (c) If applicable, that the health care provider is subject to the  
30 confidentiality requirements in 42 United States Code sections 290dd-3 and  
31 290ee-3 and applicable regulations and that those confidentiality  
32 requirements may apply to the requested records. The affidavit shall request  
33 that the court make a determination, if required under applicable federal law  
34 and regulations, as to the confidentiality of the records submitted.

35 (d) If applicable, that the health care provider has none of the  
36 ~~medical~~ records described or only part of the ~~medical~~ records described in  
37 the subpoena.

38 5. The copy of the ~~medical~~ records is admissible in evidence as  
39 provided under rule 902(11), Arizona rules of evidence. The affidavit is  
40 admissible as evidence of the matters stated in the affidavit and the matters  
41 stated are presumed true. If more than one person has knowledge of the  
42 facts, more than one affidavit may be made. The presumption established by  
43 this paragraph is a presumption affecting the burden of producing evidence.

1        ~~D.~~ E. If the A subpoena does not meet any ONE of the requirements of  
2 subsection B OF THIS SECTION OR IF GROUNDS FOR OBJECTION EXIST UNDER RULE 45  
3 OF THE ARIZONA RULES OF CIVIL PROCEDURE, a health care provider ~~shall not~~  
4 ~~produce the records pursuant to the subpoena, but may choose to~~ MAY file WITH  
5 THE COURT OR TRIBUNAL an objection TO THE INSPECTION OR COPYING OF ANY OR ALL  
6 OF THE RECORDS as follows:

7        1. On filing an objection, the health care provider shall send a copy  
8 of the objection to the patient at the patient's last known address, to the  
9 patient's attorney if known and to the party seeking the medical records,  
10 unless after reasonable inquiry the health care provider cannot determine the  
11 last known address of the patient.

12        2. On filing the objection, the health care provider has no further  
13 obligation to assert a state or federal privilege pertaining to the medical  
14 records or to appear or respond to a motion to compel production of medical  
15 records, and may produce the medical records if ordered by a court or  
16 tribunal. If an objection is filed, the patient or the patient's attorney is  
17 responsible for asserting or waiving any state or federal privilege that  
18 pertains to the medical records.

19        3. If an objection is filed, the party seeking production may request  
20 an order compelling production of the medical records. If the court or  
21 tribunal issues an order compelling production, a copy of the order shall be  
22 provided to the health care provider. On receipt of the order, the health  
23 care provider shall produce the records.

24        4. If applicable, an objection shall state that the health care  
25 provider is subject to the confidentiality requirements in 42 United States  
26 Code sections 290dd-3 and 290ee-3, shall state that the records may be  
27 subject to those confidentiality requirements and shall request that the  
28 court make a determination, if required under applicable federal law and  
29 regulations, on whether the submitted records are subject to discovery.

30        F. IF A PARTY SEEKING MEDICAL RECORDS OR PAYMENT RECORDS WISHES TO  
31 EXAMINE THE ORIGINAL RECORDS MAINTAINED BY A HEALTH CARE PROVIDER, THE HEALTH  
32 CARE PROVIDER MAY PERMIT THE PARTY TO EXAMINE THE ORIGINAL RECORDS IF THE  
33 SUBPOENA MEETS ONE OF THE REQUIREMENTS OF SUBSECTION B OF THIS SECTION. THE  
34 PARTY SEEKING THE RECORDS ALSO MAY PETITION A COURT OR TRIBUNAL FOR AN ORDER  
35 DIRECTING THE HEALTH CARE PROVIDER TO ALLOW THE PARTY TO EXAMINE THE ORIGINAL  
36 RECORDS OR TO FILE THE ORIGINAL RECORDS UNDER SEAL WITH THE COURT OR TRIBUNAL  
37 UNDER SUBSECTION D OF THIS SECTION.

38        Sec. 5. Section 12-2295, Arizona Revised Statutes, is amended to read:  
39        12-2295. Charges

40        A. Except as otherwise provided by law, a health care provider or  
41 contractor may charge a person who requests copies of medical records OR  
42 PAYMENT RECORDS a reasonable fee for the production of the records. Except  
43 as necessary for continuity of care, a health care provider or contractor may  
44 require the payment of any fees in advance.

1 B. A health care provider or contractor shall not charge for the  
2 pertinent information contained in medical records provided to:

3 1. Another health care provider for the purpose of providing  
4 continuing care to the patient to whom the medical record pertains.

5 2. The patient to whom the medical record pertains for the  
6 demonstrated purpose of obtaining health care.

7 3. The health care decision maker of the patient to whom the medical  
8 record pertains for the demonstrated purpose of obtaining health care for the  
9 patient.

10 4. The Arizona medical board, the board of osteopathic examiners in  
11 medicine and surgery or an officer of the department of health services or  
12 the local health department requesting records pursuant to section 36-662.

13 Sec. 6. Section 12-2296, Arizona Revised Statutes, is amended to read:  
14 12-2296. Immunity

15 A health care provider or contractor that acts in good faith under this  
16 article is not liable for damages in any civil action for the disclosure of  
17 medical records OR PAYMENT RECORDS or information contained in medical  
18 records OR PAYMENT RECORDS that is made pursuant to this article or as  
19 otherwise provided by law. The health care provider or contractor is  
20 presumed to have acted in good faith. The presumption may be rebutted by  
21 clear and convincing evidence.

22 Sec. 7. Section 12-2802, Arizona Revised Statutes, is amended to read:  
23 12-2802. Confidentiality of genetic testing results; disclosure

24 A. Except as otherwise provided in this article, genetic testing and  
25 information derived from genetic testing are confidential and considered  
26 privileged to the person tested and shall be released only to:

27 1. The person tested.

28 2. Any person who is specifically authorized in writing by the person  
29 tested or by that person's health care decision maker to receive this  
30 information.

31 3. The health care decision maker of the person tested.

32 4. A researcher for medical research or public health purposes only if  
33 the research is conducted pursuant to applicable federal or state laws and  
34 regulations governing clinical and biological research or if the identity of  
35 the individual providing the sample is not disclosed to the person collecting  
36 and conducting the research.

37 5. A third person if approved by a human subjects review committee or  
38 a human ethics committee, with respect to persons who are subject to an  
39 Arizona cancer registry.

40 6. An authorized agent or employee of a health care provider if all of  
41 the following are true:

42 (a) The health care provider performs the test or is authorized to  
43 obtain the test results by the person tested for the purposes of genetic  
44 counseling or treatment.



1 (b) The agent or employee provides patient care, treatment or  
2 counseling.

3 (c) The agent or employee needs to know the information in order to  
4 conduct the test or provide patient care, treatment or counseling.

5 7. A health care provider that procures, processes, distributes or  
6 uses:

7 (a) A human body part from a deceased person with respect to medical  
8 information regarding that person.

9 (b) Semen or ova for the purpose of artificial insemination.

10 8. A health care provider to conduct utilization review, peer review  
11 and quality assurance pursuant to section 36-441, 36-445, 36-2402 or 36-2917.

12 9. The authorized agent of a federal, state or county health  
13 department to conduct activities specifically authorized pursuant to the laws  
14 of this state for the birth defects registry, children's rehabilitative  
15 services, newborn screening and sickle cell diagnosis and treatment programs  
16 and chronic, environmentally provoked and infectious disease programs.

17 10. To obtain legal advice, the legal representative of a health care  
18 provider that is in possession of the medical record.

19 11. A health care provider that assumes the responsibility to provide  
20 care for, or consultation to, the patient from another health care provider  
21 that had access to the patient's genetic records.

22 B. A person shall not disclose or be compelled to disclose the  
23 identity of any person on whom a genetic test is performed or the results of  
24 a genetic test in a manner that allows identification of the person tested  
25 except to the persons specified in the circumstances set forth in subsection  
26 A of this section.

27 C. If genetic testing information is subpoenaed, a health care  
28 provider shall respond pursuant to section 12-2294.01, subsection D- E. In  
29 determining whether to order production of the genetic testing information,  
30 the court shall take all steps necessary to prevent the disclosure or  
31 dissemination of that information.

32 D. Except as provided in this section, chapter 13, article 7.1 of this  
33 title does not apply to genetic testing information that is contained within  
34 a patient's medical record.

35 E. Following the death of a person who had genetic testing performed,  
36 the release of the testing information is governed by section 12-2294,  
37 subsection D, except that the person may deny, release or limit release of  
38 the genetic testing results by adopting a provision in a testamentary  
39 document.

40 F. Except as specifically provided in this article, a person to whom  
41 test results have been disclosed pursuant to this article, other than the  
42 person tested, shall not disclose the test results to any other person.

43 G. A health care provider and the provider's agents and employees that  
44 act in good faith and that comply with this article are not subject to civil  
45 liability. The good faith of a health care provider that complies with this

1 article is presumed. The presumption may be rebutted by a preponderance of  
2 the evidence.

3 H. This article does not limit the effect of title 20 provisions  
4 governing the confidentiality and use of genetic testing information.

5 Sec. 8. Section 36-507, Arizona Revised Statutes, is amended to read:

6 36-507. Patient's rights to privacy and to personal possessions

7 Every person undergoing evaluation or treatment pursuant to this  
8 chapter shall:

9 1. Have HAS the right not to be fingerprinted.

10 2. Have HAS the right not to be photographed without consent of the  
11 person and his THE PERSON'S attorney or guardian, except that he THE PERSON  
12 may be photographed upon admission to an agency for identification and  
13 administrative purposes of the agency. All photographs shall be confidential  
14 and shall not be released by the agency except pursuant to court order.

15 3. Have HAS the right to examine the written treatment program and the  
16 medical record, unless the attending physician OR THE PHYSICIAN'S DESIGNEE  
17 WHO IS A HEALTH PROFESSIONAL AS DEFINED IN SECTION 32-3201 determines that  
18 such an examination is contraindicated OR THE REQUIREMENTS OF SECTION  
19 12-2293, SUBSECTION B ARE MET. If the attending physician OR THE PHYSICIAN'S  
20 DESIGNEE determines that DENIES such an examination is contraindicated, this  
21 determination shall be noted in the patient's medical record.

22 4. Have HAS access to individual storage space for his private use  
23 while undergoing evaluation or treatment.

24 5. Be permitted to MAY wear his THE PERSON'S own clothing, to keep and  
25 use his THE PERSON'S own personal possessions including his toilet articles  
26 and to keep and be allowed to spend a reasonable sum of his THE PERSON'S own  
27 money for his THE PERSON'S own needs and comfort. Notwithstanding the  
28 provisions of section 36-516, the director of the agency may deny the  
29 patient's rights under this paragraph if necessary to protect the safety of  
30 the patient or others. Such THE denial shall be based upon ON a written  
31 determination and entered into the patient's clinical record and the THAT  
32 information therein shall be made available on request to the person, his OR  
33 THE PERSON'S attorney or guardian.

34 Sec. 9. Section 36-509, Arizona Revised Statutes, is amended to read:

35 36-509. Confidential records

36 A. A health care entity must keep records and information contained in  
37 records confidential and not as public records, except as the requirements of  
38 a hearing pursuant to this chapter may necessitate a different procedure  
39 PROVIDED IN THIS SECTION. RECORDS AND information and CONTAINED IN records  
40 may only be disclosed to:

41 1. Physicians and providers of health, mental health or social and  
42 welfare services involved in caring for, treating or rehabilitating the  
43 patient.

44 2. Individuals to whom the patient or the patient's health care  
45 decision maker has given authorization to have information disclosed.

1           3. Persons authorized by a court order.

2           4. Persons doing research ~~or maintaining health statistics, provided~~  
3 ~~that the department establishes rules for the conduct of such research as~~  
4 ~~will ensure the anonymity of the patient~~ ONLY IF THE ACTIVITY IS CONDUCTED  
5 PURSUANT TO APPLICABLE FEDERAL OR STATE LAWS AND REGULATIONS GOVERNING  
6 RESEARCH.

7           5. The state department of corrections in cases in which prisoners  
8 confined to the state prison are patients in the state hospital on authorized  
9 transfers either by voluntary admission or by order of the court.

10          6. Governmental or law enforcement agencies if necessary to:

11           (a) Secure the return of a patient who is on unauthorized absence from  
12 any agency where the patient was undergoing evaluation and treatment.

13           (b) REPORT A CRIME ON THE PREMISES.

14           (c) AVERT A SERIOUS AND IMMINENT THREAT TO AN INDIVIDUAL OR THE  
15 PUBLIC.

16          7. Persons, including family members, actively participating in the  
17 patient's care, treatment or supervision. A health care provider may only  
18 release information relating to the patient's diagnosis, prognosis, need for  
19 hospitalization, anticipated length of stay, discharge plan, medication,  
20 medication side effects and short-term and long-term treatment goals. A  
21 health care provider may make this release only after the treating  
22 professional or that person's designee interviews the patient OR THE  
23 PATIENT'S HEALTH CARE DECISION MAKER and the patient or the patient's health  
24 care decision maker does not object, unless federal or state law otherwise  
25 permits the disclosure. IF THE PATIENT DOES NOT HAVE THE OPPORTUNITY TO  
26 OBJECT TO THE DISCLOSURE BECAUSE OF INCAPACITY OR AN EMERGENCY CIRCUMSTANCE  
27 AND THE PATIENT'S HEALTH CARE DECISION MAKER IS NOT AVAILABLE TO OBJECT TO  
28 THE RELEASE, THE HEALTH CARE PROVIDER IN THE EXERCISE OF PROFESSIONAL  
29 JUDGMENT MAY DETERMINE IF THE DISCLOSURE IS IN THE BEST INTERESTS OF THE  
30 PATIENT AND, IF SO, MAY RELEASE THE INFORMATION AUTHORIZED PURSUANT TO THIS  
31 PARAGRAPH. A decision to release or withhold information is subject to  
32 review pursuant to section 36-517.01. The health care provider must record  
33 the name of any person to whom any information is given under this paragraph.

34          8. A state agency that licenses health professionals pursuant to title  
35 32, chapter 13, 15, 17, 19.1 or 33 and that requires these records in the  
36 course of investigating complaints of professional negligence, incompetence  
37 or lack of clinical judgment.

38          9. A STATE OR FEDERAL AGENCY THAT LICENSES HEALTH CARE PROVIDERS.

39          ~~9.~~ 10. A governmental agency or a competent professional, as defined  
40 in section 36-3701, in order to comply with chapter 37 of this title.

41          ~~10.~~ 11. Human rights committees established pursuant to title 41,  
42 chapter 35. Any information released pursuant to this paragraph shall comply  
43 with the requirements of section 41-3804 and applicable federal law and shall  
44 be released without personally identifiable information unless the personally  
45 identifiable information is required for the official purposes of the human

1 rights committee. Case information received by a human rights committee  
2 shall be maintained as confidential. For the purposes of this paragraph,  
3 "personally identifiable information" includes A PERSON'S name, address, date  
4 of birth, social security number, tribal enrollment number, telephone or  
5 telefacsimile number, driver license number, places of employment, school  
6 identification NUMBER and military identification number or any other  
7 distinguishing characteristic that tends to identify a particular person.

8 ~~11.~~ 12. A patient or the patient's health care decision maker pursuant  
9 to section 36-507.

10 ~~12.~~ 13. The department of public safety by the court to comply with  
11 the requirements of section 36-540, subsection N.

12 ~~13.~~ 14. A third party payor OR THE PAYOR'S CONTRACTOR to obtain  
13 reimbursement for health care, mental health care or behavioral health care  
14 provided to the patient.

15 ~~14.~~ 15. A private entity that accredits the health care provider and  
16 with whom the health care provider has an agreement requiring the agency to  
17 protect the confidentiality of patient information.

18 16. THE LEGAL REPRESENTATIVE OF A HEALTH CARE ENTITY IN POSSESSION OF  
19 THE RECORD FOR THE PURPOSE OF SECURING LEGAL ADVICE.

20 17. A PERSON OR ENTITY AS OTHERWISE REQUIRED BY STATE OR FEDERAL LAW.

21 18. A PERSON OR ENTITY AS PERMITTED BY THE FEDERAL REGULATIONS ON  
22 ALCOHOL AND DRUG ABUSE TREATMENT (42 CODE OF FEDERAL REGULATIONS PART 2).

23 19. A PERSON OR ENTITY TO CONDUCT UTILIZATION REVIEW, PEER REVIEW AND  
24 QUALITY ASSURANCE PURSUANT TO SECTION 36-441, 36-445, 36-2402 OR 36-2917.

25 20. A PERSON MAINTAINING HEALTH STATISTICS FOR PUBLIC HEALTH PURPOSES  
26 AS AUTHORIZED BY LAW.

27 21. A GRAND JURY AS DIRECTED BY SUBPOENA.

28 B. INFORMATION AND RECORDS OBTAINED IN THE COURSE OF EVALUATION,  
29 EXAMINATION OR TREATMENT AND SUBMITTED IN ANY COURT PROCEEDING PURSUANT TO  
30 THIS CHAPTER OR TITLE 14, CHAPTER 5 ARE CONFIDENTIAL AND ARE NOT PUBLIC  
31 RECORDS UNLESS THE HEARING REQUIREMENTS OF THIS CHAPTER OR TITLE 14, CHAPTER  
32 5 REQUIRE A DIFFERENT PROCEDURE. INFORMATION AND RECORDS THAT ARE OBTAINED  
33 PURSUANT TO THIS SECTION AND SUBMITTED IN A COURT PROCEEDING PURSUANT TO  
34 TITLE 14, CHAPTER 5 AND THAT ARE NOT CLEARLY IDENTIFIED BY THE PARTIES AS  
35 CONFIDENTIAL AND SEGREGATED FROM NONCONFIDENTIAL INFORMATION AND RECORDS ARE  
36 CONSIDERED PUBLIC RECORDS.

37 C. NOTWITHSTANDING SUBSECTIONS A AND B OF THIS SECTION, THE LEGAL  
38 REPRESENTATIVE OF A PATIENT WHO IS THE SUBJECT OF A PROCEEDING CONDUCTED  
39 PURSUANT TO THIS CHAPTER AND TITLE 14, CHAPTER 5 HAS ACCESS TO THE PATIENT'S  
40 INFORMATION AND RECORDS IN THE POSSESSION OF A HEALTH CARE ENTITY OR FILED  
41 WITH THE COURT.

1       Sec. 10. Section 36-517.01, Arizona Revised Statutes, is amended to  
2 read:

3       36-517.01. Review of decisions regarding release of treatment  
4                   information; notice; appeal; immunity

5       A. An agency providing evaluation or treatment, on request of a person  
6 undergoing evaluation or treatment, a member of his family or his guardian,  
7 shall review the treating professional's decision to release or withhold  
8 information requested pursuant to section 36-504, subsection B or section  
9 36-509, SUBSECTION A, paragraph 7. The agency shall inform a person whose  
10 request is denied of his right to a review when it notifies that person of  
11 its decision. The agency director or his designee shall conduct the review  
12 within five business days after the request for review is made. The review  
13 shall include an interview of the person undergoing evaluation or  
14 treatment. The agency shall make a decision to uphold or reverse the  
15 treating professional's decision within five business days after initiating  
16 the review. The agency shall bear the costs of conducting the  
17 review. Agency review pursuant to this section does not apply to a decision  
18 to release or withhold information made by a nonagency treating professional.

19       B. A final agency decision made pursuant to subsection A of this  
20 section or a decision to release or withhold information made by a nonagency  
21 treating professional is subject to judicial review by filing a petition in  
22 the superior court within five business days after the agency or nonagency  
23 treating professional issues its decision. The court shall hold a hearing on  
24 the petition within five business days after the petition is filed. The  
25 agency or nonagency treating professional shall not release any treatment  
26 information during the period an appeal may be filed or is pending.

27       C. An agency or nonagency treating professional that makes a decision  
28 to release or withhold treatment information in good faith pursuant to  
29 section 36-504, subsection B or section 36-509, SUBSECTION A, paragraph 7 is  
30 not subject to civil liability for this decision.

31       Sec. 11. Section 36-664, Arizona Revised Statutes, is amended to read:

32       36-664. Confidentiality; exceptions

33       A. A person who obtains communicable disease related information in  
34 the course of providing a health service or obtains that information from a  
35 health care provider pursuant to an authorization shall not disclose or be  
36 compelled to disclose that information except to the following:

37       1. The protected person or, if the protected person lacks capacity to  
38 consent, the protected person's health care decision maker.

39       2. The department or a local health department for purposes of  
40 notifying a good Samaritan pursuant to subsection E of this section.

41       3. An agent or employee of a health facility or health care provider  
42 to provide health services to the protected person or the protected person's  
43 child or for billing or reimbursement for health services.

44       4. A health facility or health care provider, in relation to the  
45 procurement, processing, distributing or use of a human body or a human body

1 part, including organs, tissues, eyes, bones, arteries, blood, semen, milk or  
2 other body fluids, for use in medical education, research or therapy or for  
3 transplantation to another person.

4 5. A health facility or health care provider, or an organization,  
5 committee or individual designated by the health facility or health care  
6 provider, that is engaged in the review of professional practices, including  
7 the review of the quality, utilization or necessity of medical care, or an  
8 accreditation or oversight review organization responsible for the review of  
9 professional practices at a health facility or by a health care provider.

10 6. A private entity that accredits the health facility or health care  
11 provider and with whom the health facility or health care provider has an  
12 agreement requiring the agency to protect the confidentiality of patient  
13 information.

14 7. A federal, state, county or local health officer if disclosure is  
15 mandated by federal or state law.

16 8. A federal, state or local government agency authorized by law to  
17 receive the information. The agency is authorized to redisclose the  
18 information only pursuant to this article or as otherwise permitted by law.

19 9. An authorized employee or agent of a federal, state or local  
20 government agency that supervises or monitors the health care provider or  
21 health facility or administers the program under which the health service is  
22 provided. An authorized employee or agent includes only an employee or agent  
23 who, in the ordinary course of business of the government agency, has access  
24 to records relating to the care or treatment of the protected person.

25 10. A person, health care provider or health facility to which  
26 disclosure is ordered by a court or administrative body pursuant to section  
27 36-665.

28 11. The industrial commission or parties to an industrial commission  
29 claim pursuant to ~~the provisions of~~ section 23-908, subsection D and section  
30 23-1043.02.

31 12. Insurance entities pursuant to section 20-448.01 and third party  
32 payors or the payors' contractors.

33 13. Any person or entity as authorized by the patient or the patient's  
34 health care decision maker.

35 14. A PERSON OR ENTITY AS REQUIRED BY FEDERAL LAW.

36 15. THE LEGAL REPRESENTATIVE OF THE ENTITY HOLDING THE INFORMATION IN  
37 ORDER TO SECURE LEGAL ADVICE.

38 16. A PERSON OR ENTITY FOR RESEARCH ONLY IF THE RESEARCH IS CONDUCTED  
39 PURSUANT TO APPLICABLE FEDERAL OR STATE LAWS AND REGULATIONS GOVERNING  
40 RESEARCH.

41 B. At the request of the department of economic security in  
42 conjunction with the placement of children in foster care or for adoption or  
43 court-ordered placement, a health care provider shall disclose communicable  
44 disease information, including HIV-related information, to the department of  
45 economic security.

1 C. A state, county or local health department or officer may disclose  
2 communicable disease related information if the disclosure is any of the  
3 following:

- 4 1. Specifically authorized or required by federal or state law.
- 5 2. Made pursuant to an authorization signed by the protected person or  
6 the protected person's health care decision maker.
- 7 3. Made to a contact of the protected person. The disclosure shall be  
8 made without identifying the protected person.
- 9 4. For the purposes of research as authorized by state and federal  
10 law.

11 D. The director may authorize the release of information that  
12 identifies the protected person to the national center for health statistics  
13 of the United States public health service for the purposes of conducting a  
14 search of the national death index.

15 E. The department or a local health department shall disclose  
16 communicable disease related information to a good Samaritan who submits a  
17 request to the department or the local health department. The request shall  
18 document the occurrence of the accident, fire or other life-threatening  
19 emergency and shall include information regarding the nature of the  
20 significant exposure risk. The department shall adopt rules that prescribe  
21 standards of significant exposure risk based on the best available medical  
22 evidence. The department shall adopt rules that establish procedures for  
23 processing requests from good Samaritans pursuant to this subsection. The  
24 rules shall provide that the disclosure to the good Samaritan shall not  
25 reveal the protected person's name and shall be accompanied by a written  
26 statement that warns the good Samaritan that the confidentiality of the  
27 information is protected by state law.

28 F. An authorization to release communicable disease related  
29 information shall be signed by the protected person or, if the protected  
30 person lacks capacity to consent, the protected person's health care decision  
31 maker. An authorization shall be dated and shall specify to whom disclosure  
32 is authorized, the purpose for disclosure and the time period during which  
33 the release is effective. A general authorization for the release of medical  
34 or other information, including communicable disease related information, is  
35 not an authorization for the release of HIV-related information unless the  
36 authorization specifically indicates its purpose as an authorization for the  
37 release of confidential HIV-related information and complies with the  
38 requirements of this section.

39 G. A person to whom communicable disease related information is  
40 disclosed pursuant to this section shall not disclose the information to  
41 another person except as authorized by this section. This subsection does  
42 not apply to the protected person or a protected person's health care  
43 decision maker.

44 H. If a disclosure of communicable disease related information is made  
45 pursuant to an authorization under subsection F of this section, the

1 disclosure shall be accompanied by a statement in writing that warns that the  
2 information is from confidential records protected by state law and that  
3 prohibits further disclosure of the information without the specific written  
4 authorization of the person to whom it pertains or as otherwise permitted by  
5 law.

6 I. This section does not prohibit the listing of communicable disease  
7 related information, including acquired immune deficiency syndrome,  
8 HIV-related illness or HIV infection, in a certificate of death, autopsy  
9 report or other related document that is prepared pursuant to law to document  
10 the cause of death or that is prepared to release a body to a funeral  
11 director. This section does not modify a law or rule relating to access to  
12 death certificates, autopsy reports or other related documents.

13 J. If a person in possession of HIV-related information reasonably  
14 believes that an identifiable third party is at risk of HIV infection, that  
15 person may report that risk to the department. The report shall be in  
16 writing and include the name and address of the identifiable third party and  
17 the name and address of the person making the report. The department shall  
18 contact the person at risk pursuant to rules adopted by the department. The  
19 department employee making the initial contact shall have expertise in  
20 counseling persons who have been exposed to or tested positive for HIV or  
21 acquired immune deficiency syndrome.

22 K. Except as otherwise provided pursuant to this article or subject to  
23 an order or search warrant issued pursuant to section 36-665, a person who  
24 receives HIV-related information in the course of providing a health service  
25 or pursuant to a release of HIV-related information shall not disclose that  
26 information to another person or legal entity or be compelled by subpoena,  
27 order, search warrant or other judicial process to disclose that information  
28 to another person or legal entity.

29 L. This section ~~or~~ AND sections 36-663, 36-666, 36-667 and 36-668 do  
30 not apply to persons or entities subject to regulation under title 20.

31 Sec. 12. Section 36-3602, Arizona Revised Statutes, is amended to  
32 read:

33 36-3602. Delivery of health care through telemedicine;  
34 requirements; exceptions

35 A. Except as provided in subsection D- E of this section, before a  
36 health care provider delivers health care through telemedicine, the treating  
37 health care provider shall obtain verbal or written informed consent from the  
38 patient or the patient's health care decision maker. If the informed consent  
39 is obtained verbally, the health care provider shall document the consent on  
40 the patient's medical record.

41 B. The patient is entitled to all existing confidentiality protections  
42 pursuant to section 12-2292.

43 C. All medical reports resulting from a telemedicine consultation are  
44 part of a patient's medical record as defined in section 12-2291.



1           D. Dissemination of any images or information identifiable to a  
2 specific patient for research or educational purposes shall not occur without  
3 the patient's consent, unless authorized by state or federal law.

4           E. The consent requirements of this section do not apply:

5           1. If the telemedicine interaction does not take place in the physical  
6 presence of the patient.

7           2. In an emergency situation in which the patient or the patient's  
8 health care decision maker is unable to give informed consent.

9           3. To the transmission of diagnostic images to a health care provider  
10 serving as a consultant or the reporting of diagnostic test results by that  
11 consultant.

APPROVED BY THE GOVERNOR APRIL 25, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 25, 2005.

Passed the House April 13, 20 05.

by the following vote: 57 Ayes,

1 Nays, 2 Not Voting

  
Speaker of

*Norman L. Tzooze*  
Chief Clerk of the House

Passed the Senate March 8, 2005.

by the following vote: 25 Ayes,

2 - Ayes, 3 - Nays, 3 - Not Voting

*Ken Bennett*  
President of

*Charmian Bellington*  
Secretary of the Senate

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR**

**This Bill** was received by the Governor this

                     day of                     , 20          ,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

**Secretary to the Governor**

Approved this \_\_\_\_\_ day of \_\_\_\_\_

\_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

**Governor of Arizona**

**EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE**

**This Bill was received by the Secretary of State**

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_,

at \_\_\_\_\_ o'clock \_\_\_\_\_ M.

**Secretary of State**

**S.B. 1353**

SENATE CONCURS IN HOUSE AMENDMENTS  
AND FINAL PASSAGE

Passed the Senate April 19, 2005,

by the following vote: 26 Ayes,

2 Nays, 2 Not Voting

Klu Bennett  
President of the Senate  
Chaimin Ballinger  
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

Jennifer L. Harris  
Secretary to the Governor

Approved this 25 day of

April, 2005,

at 9:50 o'clock A. M.

J. N. ...  
Governor of Arizona

S.B. 1353

EXECUTIVE DEPARTMENT OF ARIZONA  
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 25 day of April, 2005

at 4:33 o'clock P. M.

Janice K. Brewer  
Secretary of State